

JAN 4 - 2006

No. 05 -488

(5)

IN THE

Supreme Court of the United States

Lucy Virgilio, PERSONAL REPRESENTATIVE OF LAWRENCE VIRGILIO, Geraldine
 Halderman, PERSONAL REPRESENTATIVE OF LT. DAVID HALDERMAN, Eileen
 Tallon, PERSONAL REPRESENTATIVE OF SEAN PATRICK TALLON, Gergard J.
 Prior, PERSONAL REPRESENTATIVE OF KEVIN M. PRIOR, Catherine
 Regenhard, PERSONAL REPRESENTATIVE OF CHRISTIAN REGENHARD,
 Maureen L. Dewan-Gilligan, PERSONAL REPRESENTATIVE OF GERARD P.
 DEWAN, James Boyle, PERSONAL REPRESENTATIVE OF MICHAEL BOYLE,
 Edward Sweeney, PERSONAL REPRESENTATIVE OF BRIAN SWEENEY,

(caption continued on inside front cover)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES

**Motion of the Honorable Henry J. Hyde and the Honorable Carolyn B.
 Maloney to Leave to File and Extension of Time to File Brief, *Amicus
 Curiae*, in Support of Petition for Writ of Certiorari**

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ALEXANDER SANTORA, Personal Representative of Christopher Santora, MAUREEN
SANTORA, Personal Representative of Christopher Santora, RAFFAELA CRISCI,
Personal Representative of John A. Crisci and PATRICIA DEANGELIS, Personal
Representative of Thomas P. DeAngelis,

Petitioners,

v.

CITY OF NEW YORK and MOTOROLA, INC.,

Respondents.

IN THE

**Supreme Court of the United
States**

LUCY VIRGILIO, Personal Representative of Lawrence Virgilio,
GERALDINE HALDERMAN, Personal Representative of Lt.
David Halderman, EILEEN TALLON, Personal
Representative of Sean Patrick Tallon, GERGARD J. PRIOR,
Personal Representative of Kevin M. Prior, CATHERINE
REGENHARD, Personal Representative of Christian
Regenhard, MAUREEN L. DEWAN-GILLIGAN, Personal
Representative of Gerard P. Dewan, JAMES BOYLE,
Personal Representative of Michael Boyle, EDWARD
SWEENEY, Personal Representative of Brian Sweeney,
GERALD JEAN-BAPTISTE, Co-Personal Representative of
Gerard Jean Baptiste, Jr., ALEXANDER SANTORA, Personal
Representative of Christopher Santora, MAUREEN
SANTORA, Personal Representative of Christopher Santora,
RAFFAELA CRISCI, Personal Representative of John A.
Crisci and PATRICIA DEANGELIS, Personal Representative
of Thomas P. DeAngelis,

Petitioners,

v.

CITY OF NEW YORK and MOTOROLA, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

Motion, Upon Consent, of the Honorable Henry J.
Hyde and Carolyn B. Maloney, for an Extension of
Time to File Brief, *Amici Curiae*, in Support of
Petition for Writ of Certiorari, and Brief *Amici Curiae*

The Honorable Henry J. Hyde, on behalf of himself
and Carolyn B. Maloney, both of whom are members
of the United States House of Representatives,
respectfully move that the Court grant them leave to
file brief *amici curiae* out of time in support of the
petition for a writ of certiorari.¹

Both Chairman Hyde and Congresswoman
Maloney were, at all times pertinent to the Petition
pending before the Court in this matter, lawfully
serving as duly elected members of the United States
House of Representatives as provided for under the

¹ *Amici curiae* received editing assistance and copies of
pleadings filed in this matter from Petitioners. No person or
entity, other than the *Amici Curiae*, made a monetary
contribution to the preparation or submission of the brief.

Constitution of the United States of America. Congressman Hyde now serves as Chairman of the Committee on International Relations and heretofore served as Chairman of the Committee of the Judiciary of the United States House of Representatives.²

The proposed brief of Chairman Hyde and Congresswoman Maloney set forth factual and legal bases for their position and belief that the Air Transportation Safety and System Stabilization Act, 49 U.S.C. Section 40101 note, Pub. L. No. 107-42 (2001), the statute at issue in this case, should be construed to permit petitioners to pursue a lawsuit for punitive damages, regardless of the constraints imposed under the act on persons filing claims with the Victims Compensation Fund created by Congress. They argue that it was the express intent of Congress

² *Amici Curiae* request the Court's consideration in allowing this brief to be filed out of time based on the extraordinary press of legislative affairs before the Congress up and through December 22, 2005, and moreover, the time Chairman Hyde has devoted to the care and spiritual support of his seriously ill son.

that claimants on the Fund would waive only claims for compensatory or actual damages, and not for punitive damages, and that only acts that occurred on September 11, 2001, are to be construed as resulting from the tragic airplane crashes that occurred on that fateful day.³

The Honorable Henry J. Hyde and the Honorable Carolyn B. Maloney, members of the United States House of Representatives, respectfully submit this brief, *amici curiae*, in support of the Petition for Writ of Certiorari. *Amici* actively participated in the development and enactment of the Air Transportation Safety and System Stabilization Act ("ATSSSA"), 49 U.S.C. Section 40101 note, Pub. L. No. 107-42 (2001), and have a strong interest in ensuring that the

³ Attached hereto is written consent from two of the parties and the third party, Motorola has orally affirmed that it has no objection to the filing of this Brief *Amici Curiae*.

statute is construed and applied in the manner that Congress intended.⁴

ATSSSA was enacted as emergency legislation in the immediate wake of the terrorist attacks of September 11, 2001. Congress' intent is clearly manifested in its preamble: An Act to preserve the continued viability of the U.S. air transportation system. The context, shown both in title and legislative comments, was to avoid an immediate collapse of America's air transportation industry which, it was feared, might precipitate a severe economic crisis equivalent to that of the Great Depression.

To that end, ATSSSA contains four substantive parts, or titles. Title I creates a board to disperse \$15 billion in federal assistance to the airline industry. Title II provides a mechanism for federal

⁴ Chairman Hyde served as Chairman of the United State House of Representatives Judiciary Committee from 1995-2001, and Mrs. Maloney was elected from the 14th district of New York which encompasses a substantial portion of Manhattan.

reimbursement of insurance premium increases to airlines. Title III provides tax relief to the airlines. Title IV, the Title at issue in this case, limited civil liability for the airlines and air transportation industry and provided a victims compensation fund to recompense those who were injured or killed on the site as a direct result of the terrorist acts.

As a whole, the statute evinces a purpose to preserve the air transportation industry and with it, the national economy. Congress' determination to establish an alternative mechanism by which victims and their families could obtain some form of substantive compensation from the government was essential -- both politically and constitutionally -- for Congress to substantially limit the exposure of the air transportation industry through lawsuits. Thus, the Victims Compensation Fund was a necessary element of Congress' overall purpose and plan.

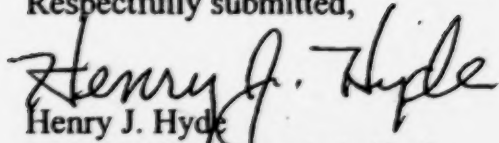
The statute did require claimants on the compensation fund to give up or waive their right to file lawsuits "for damages sustained as a result of" the terrorist acts. It never was Congress' intention, however, to require claimants on the fund to waive claims they might have against independent tortfeasors for acts committed prior to September 11 that may have been a proximate cause of injury or death on that terrible day. Such claims, if "related to" the aircraft crashes, were to be encompassed within the jurisdictional section 408 of ATSSSA; never was it contemplated, however, that persons injured or killed by such independent acts would be deprived of seeking judicial redress or relief. That is to say, regardless of whether claims on the compensation fund were filed, such claimants remain entitled to "their day in court".

It also was not Congress' intent to require claimants on the compensation fund to waive claims

for punitive damages based upon intentional or highly culpable conduct. That is why Congress used the term "damages sustained," which is a virtual term of art for compensatory damages, and otherwise did not allow for punitive damages to be factored in the amount of awards made thereunder. Thus, it was intended that a claimant on the fund would still be able to pursue a claim for punitive damages based on such culpable conduct, to the extent that common or state statutory laws permit. Consistent with Congress' stated purpose, the survival of the air transportation sector, any such claims against the airlines or related industries would still be limited to the overall damage cap established in the statute.

Amici thank the Court for the opportunity to present their views on the important national questions raised by the petition in this case.

Respectfully submitted,

A handwritten signature in dark ink, reading "Henry J. Hyde". The signature is written in a cursive style with a large, prominent "H" and a long, sweeping underline that extends to the right.

Henry J. Hyde

Individually and on behalf of
Carolyn B. Maloney
United States House of
Representatives

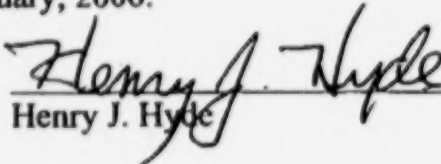
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct
copy of the foregoing has been furnished via US Mail
to:

<p>Michael A. Cardozo Kenneth A. Becker Belina Anderson Corporation Counsel of the City of New York 100 Church Street New York, New York 10007 (212) 341-0306</p> <p>Counsel for City of New York</p>	<p>Michael D. Schissel Arnold & Porter, LLP 399 Park Avenue New York, New York 10022 (212) 715-1000</p> <p>Counsel for Motorola, Inc.</p>
<p>Eric M. Lieberman Rabinowitz, Boudin, Standard, Krinsky & Lieberman 111 Broadway, 11th Floor New York, New York 10006 (212) 254-1111</p> <p>Counsel for Petitioners</p>	

this 4th day of January, 2006:


Henry J. Hyde